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DISCUSSION

1. Legal Standard

Under Rule 59(e), a motion for reconsideration may be granted only on one of four grounds, “1) the motion is necessary to correct manifest errors of law or fact upon which the judgment is based; 2) the moving party presents newly discovered or previously unavailable evidence; 3) the motion is necessary to prevent manifest injustice or 4) there is an intervening change in controlling law.” *Turner v. Burlington N. Santa Fe R.R. Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003) (internal quotations and emphasis omitted). Motions for reconsideration are disfavored and are not the place for parties to make new arguments not raised in their original briefs and arguments. *See Northwest Acceptance Corp. v. Lynnwood Equip., Inc.*, 841 F.2d 918, 925–26 (9th Cir. 1988). Nor should such motions ask the Court to “rethink what the court has already thought through—rightly or wrongly.” *See United States v. Rezzonico*, 32 F. Supp. 2d 1112, 1116 (D. Ariz. 1998) (quoting *Above the Belt, Inc. v. Mel Bohannon Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983)).

2. Analysis

Plaintiff contends that it was improper for the Court to dismiss Defendants Rob Mulholland and Mike Swebe from this suit. (Doc. 20). Plaintiff acknowledges that the Ninth Circuit has held “that individual defendants cannot be held liable for damages under Title VII . . . and . . . [the principle is also] applicable to suits under the ADEA.” *Miller v. Maxwell’s Intern. Inc.*, 991 F.2d 583, 588 (9th Cir. 1993). She nevertheless cites decisions that either pre-date *Miller* or come from other circuits which hold that supervisory employees may be sued in their official capacity under Title VII and the ADEA. Whether or not decisions from other circuits are persuasive, when the Ninth Circuit has ruled decisively on an issue, its ruling is binding on this Court. The individual employees were properly dismissed.

Plaintiff next contends that the “Mediation Agreement” which she alleges that Defendants violated is not an “employment contract” and therefore not subject to the one-year statute of limitations under A.R.S. § 12-541(3) (2004). The Arizona Court of Appeals has stated that “employment contract,” as used in A.R.S. § 12-541(3), should be interpreted

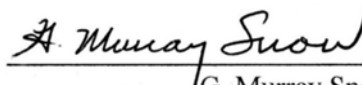
1 broadly, nothing that its scope extends beyond “circumstances under which discharging an
2 employee may be legally actionable.” *Redhair v. Kinerk, Beal, Schmidt, Dyer & Sethi*, 218
3 Ariz. 293, 297, 183 P.3d 544, 548 (App. 2008). Plaintiff alleges that her termination was
4 wrongful and in retaliation for her previous EEO activity. (Doc. 7 at 2–3). The only portion
5 of the Mediation Agreement that she alleges Defendants breached is the provision stating that
6 they would not discriminate or retaliate against her for her EEO activity. (*Id.* at 4–6). As
7 such, even if her claim were not barred by the statute of limitations, recovery would be
8 complete based on her retaliation claim, as noted in the original order. (Doc. 17).

9 **CONCLUSION**

10 The individual employee defendants and Plaintiff’s breach of contract claim were
11 properly dismissed.

12 **IT IS THEREFORE ORDERED** that Plaintiff’s Motion to Reinstate Mulholland
13 and Swebee as Defendants and to Reinstate Count Two (Doc. 20) is **denied**.

14 DATED this 5th day of December, 2011.

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18 G. Murray Snow
19 United States District Judge
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